

Heritage Lincolnshire – Terms and Conditions of Construction and Groundworks

1. Acceptance of Terms and Conditions

- 1.1. Where we have received tender documentation, we will not at this stage have perused or agreed to the contract terms and conditions as submitted with your tender. Should our offer prove of interest to you, we shall be happy to peruse and respond to them accordingly. In the interim, our offer is based on our following terms and conditions.
- 1.2. The acceptance of our proposal includes the acceptance of these terms and conditions which shall apply between us, Heritage Lincolnshire, a company registered in England and Wales under company number 10014163, whose registered office address is at The Old School, Cameron Street, Heckington, Sleaford, Lincolnshire, NG34 9RW (the "Company") and you, who shall be the party entering into contract with us.
- 1.3. These terms and conditions shall apply as the binding and entire contract between the parties hereto and any terms and conditions of you, unless agreed to by us in writing, are expressly excluded.

2. Errors or Discrepancies: Our proposal is based on the information provided to us at the time of its preparation. Should any errors or discrepancies become evident which affect our order value, we reserve the right to make adjustments to it.

3. Validity: Unless otherwise stated, our proposal is open for acceptance within a period of 90 days from the date of its issue. Where we have quoted to carry out more than one item of work, our price is based on the entire proposal being accepted. Should you wish to accept part of the proposal, our prices may be subject to change.

4. Scope of Works

- 4.1. Our proposal constitutes our entire scope of works.
- 4.2. we do not accept liability for design or act as Principal Contractor in the full sense of CDM requirements.

5. Surveys: Where possible, we will arrange a site survey. At the time of survey, the site should be made available and fully accessible and our proposal will be based on any findings at this time. Any dimensions provided by you will be subject to re-measuring at this time. Any findings that have changed since the survey or were not evident at the time of survey will be added to the contract price.

6. Notice Period: We require a minimum of 2 weeks formal notice to commence the works. If, subsequent to the giving of such notice the site is not ready for our works to commence, we shall require a further written notice from you.

7. Consents: If any consents, licences or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, it shall be your responsibility to obtain the same.

8. Programme

- 8.1. All programme dates are to be treated as estimates only and unless otherwise agreed in writing, we shall have no obligation to start or complete the works by a specified date.
- 8.2. We will only procure plant, equipment, materials and subcontractors when we are in receipt of a full written order and any advance payments due in accordance with clause 11.
- 8.3. Delivery to site and the works cannot commence until any requested payments have been received and you have confirmed in writing that the site is ready to receive any materials or plant and the works can commence.

9. Delivery

- 9.1. Unless stated to the contrary, the proposal includes delivery to site. In the event that we have ordered any plant and materials and these need to be returned as a result of changes to the specification by you, we reserve the right to make a charge for redelivery and administration costs.
- 9.2. Costs are calculated on the basis that there are no restrictions on accessing the site. Additional costs may be applicable if special requirements or restrictions exist.
- 9.3. If for any reason we are unable to deliver any plant or materials on the agreed date, you shall be liable for any costs incurred by us arising from the non-delivery (including storage, insurance and re-delivery costs) and a charge may be raised where vehicles are unable to deliver materials within 60 minutes of arrival.

10. The Works

- 10.1. Unless specifically stated to the contrary in writing, the works will be carried out during ordinary working hours (Monday to Friday,

excluding bank holidays). We make no allowance for critical activity working. If it shall be agreed that overtime be worked, there shall be added to the extra costs incurred overhead charges and profit.

- 10.2. Unless otherwise agreed, we have not included for any welfare facilities, shared attendances, lighting, water, access towers or for the protection of our works and these are to be undertaken by others at no cost to us.
- 10.3. You are responsible for ensuring that the area at which our works are to be carried out is accessible, safe, well-lit and correctly prepared.
- 10.4. Any extra costs incurred, due to your instructions, lack of instructions, failure to comply with the provisions of this clause 10, interruptions, delays, overtime, night or weekend working, and additional work or variations or work for which we are not responsible or mistakes or any other causes outside our control, shall be added to the contract price. Any such charges shall be based upon our standard rates in effect at the time.
- 10.5. Excepting damage caused by you or any third party, we will be responsible for protection of our works whilst they are being carried out. We will require your nominated site representative to inspect and sign off areas of completed works. Upon sign off of each stage of the works, said stage will be deemed completed and you accept full responsibility and liability to protect our works from damage from the time of sign off, whether the works have been handed over in part or in full.
- 10.6. The works shall be considered complete on our written notification to you that the works have been handed over.
- 10.7. Any discoveries made while completing the works shall be treated in accordance with the Treasure Act 1996. Where human or other remains are found they shall be dealt with in accordance with current best practice at the time, including completing a full coroner's report. Where any additional works are required as a result of this clause 10.7 we reserve the right to charge extra for such.
- 10.8. All artefacts discovered upon our work shall belong to the landowner. However, due to the archaeological nature of the artefacts, the landowner agrees prior to commencement of work to donate all artefacts unconditionally to the appropriately advised museum for long term storage and curation. Final confirmation will need to be in writing from the landowner on completion of work.

11. Payment Terms

- 11.1. Subject to a credit check, our standard payment terms shall be 10% as deposit with order, such shall not be refundable, with 90% to be invoiced by way of monthly applications as the works progress. We reserve the right to make any amendments to our payment terms at any time, such new terms shall be specified in our Proposal.
- 11.2. All invoices are payable by BACS within 30 days from the date of invoice, unless otherwise agreed.
- 11.3. If payment is not made in accordance with these terms, we shall be entitled to suspend work in accordance with clause 16 and for any period that any payments are in arrears, there shall be added a corresponding term to the contract period.
- 11.4. Interest shall be paid on all overdue accounts from the date payment was due (as set out above) until actually made at eight percent per annum above the Bank of England base rate in force at the time, both before and after judgment, under the Late Payment of Commercial Debts (Interest) Act 1998.
- 11.5. We are unable to accept any of our monies being 'set off'. No MCD or PPD discount is to be applied unless specifically agreed in writing, prior to commencement of the works.
- 11.6. Any collateral warranty(s) given by us, or any other separate agreement, shall become null and void if payment is not made in accordance with these terms. We may consider entering into any collateral warranties subject to agreement of wording, in consideration of 2.5% of the contract sum.
- 11.7. All prices quoted are in pounds sterling and subject to VAT at the current rate.

12. Delay and Abortive Visits: Our price is based on being able to commence our works on the date agreed and to complete our works in one continuous visit, or where we are carrying out the works in phases, each phased visit is to be continuous. If the site is not available or ready for our works to commence, the site is unsafe or unsuitable or there are any restrictions on site, including but not limited to protected species presence and asbestos discovery and/or if we are prevented from continuous working through to completion and/or if we are required to complete out of sequence works, we reserve the right to recover any costs incurred by way of delay or abortive visits, such as for storage of materials or non-productive visits to site.

13. Storage, Protection, and Insurance

- 13.1. If any plant, equipment and materials are delivered to site and the site has not progressed sufficiently so as for our works to commence and these are placed into storage on site, the responsibility for protection and insurance of such passes to you, whilst title of these will remain with us until we are paid in full.
- 13.2. If the start date is delayed through no fault of our own and you decide not to store on site, we shall place them into storage and any costs associated with such storage shall be passed on to you.

14. **Variations:** Any variation must be evidenced by a written instruction and accepted requote before we proceed with the works unless otherwise agreed.

15. Price Variations

- 15.1. Any price variation shall become due for payment to us in accordance with the terms for payment herein.
- 15.2. In respect of variations, we shall be entitled to further payment for such, to be calculated by us, these works shall not be subject to MCD or PPD.
- 15.3. All prices will be subject to variation in respect of any costs arising by virtue of any statute, regulations or orders issued by any government department or other duly constituted authority.
- 15.4. Our offer, where appropriate, allows for the cost of importing any materials required for the works based upon the rates of exchange, tax or duty and labour rates prevailing at the date of our offer. In the event of any adjustment in such rates, we reserve the right to make an adjustment to our contract value.

16. **Suspension:** In the event that we have exercised our right under Section 111 of the Housing Grants, Construction and Regeneration Act 1996 to suspend performance of our obligations under this contract, you shall reimburse us in respect of any loss and/or expense incurred by us during the period of the suspension including the cost of re-mobilisation on the lifting of the suspension.

17. Risk and Title

- 17.1. Any materials, reports, documentation and other intellectual property supplied by us shall remain our property until full payment of our contract value is received. Until title passes:
- 17.1.1. we shall have authority to retake, sell or otherwise deal with and/or dispose of all or any part of such;
- 17.1.2. we, our agents and employees shall be entitled at any time and without the need to give notice, enter upon any property upon which the materials are stored, or upon which we reasonably believe them to be kept for the purpose of removing said materials;
- 17.1.3. you shall store and mark the materials in a manner reasonably satisfactory to us indicating that title to the materials remains vested in us;
- 17.1.4. you shall insure the materials to their full replacement value; and
- 17.1.5. irrespective that title to the materials remains with us, risk in the materials shall pass to you upon delivery.

18. General Liability

- 18.1. We shall not be liable for any delay or for any consequence of any delay in the delivery of any materials or the commencement or completion of the work if such delay is due to any circumstance outside our control. This includes, but is not limited to, inclement weather, fire, strike, flood, accident, delay in transport, default of any sub-contractor, inability to obtain material or labour, any government act, demand or requirement, as a consequence of war or hostilities (whether war be declared or not), epidemic or pandemic or any other force majeure event or cause whatsoever beyond our reasonable control.
- 18.2. If any such delay occurs, then (unless the cause thereof shall frustrate or render impossible or illegal the performance of this contract or shall otherwise discharge the same) our period for performing our obligations shall be extended by such period (not limited to the length of the delay) as we may reasonably require to complete the performance of our obligations.
- 18.3. We do accept liability and will indemnify you against any damage we may cause as a direct result of our negligence resulting in personal injury or death. Except as provided in this clause 18.3, we shall not be liable whether by way of indemnity, breach of contract or statutory duty or in tort (including negligence) for any loss of profit, loss of use, loss of contract or contracts, or for any financial or economic loss or for any indirect or consequential loss or damage whatsoever.
- 18.4. We shall not be liable for and you shall indemnify and hold us harmless against any claim for loss or damage to any property directly or indirectly occasioned by or arising from your improper possession of any of our materials and from negligence or default

(including any non-compliance with any obligation of this agreement, any delay, any wrong information and any lack of required information) or misuse by or on the part of you or any persons other than ourselves.

- 18.5. This indemnity shall extend to any costs and expenses incurred by us and shall continue in force notwithstanding the termination of the contract.
- 18.6. These terms and conditions shall be exhaustive of the rights, obligations and liabilities of each party, whether such rights, obligations and liabilities arise in respect of or in consequence of a breach of contract or statutory duty or a tortious or negligent act or omission which gives rise to a remedy at common law.

19. **Extension of Time:** If our completion date is delayed as a result of a relevant sub-contract event, such as a variation, an impediment, direction, prevention or default of the main contractor, lack of equipment availability, adverse weather or any event beyond our control, including an epidemic or pandemic, and we give notice to you of such delay, you shall grant an extension of time as estimated to be fair and reasonable in the circumstances.

20. Literature and Representations

- 20.1. Our marketing literature is presented in good faith as a guide to represent the Services offered and does not form a part of our contract.
- 20.2. Our employees and agents are not authorised to make any representation concerning the materials and services unless confirmed by us in writing. In entering into the contract, you acknowledge that you do not rely on and waive any claim for breach of any such representations, which are not confirmed.

21. Cancellation

- 21.1. Should you cancel the order with us, we reserve the right to levy reasonable cancellation charges including, but not limited to, any administration costs, procurement costs and loss of profit, against you and these shall fall due for payment immediately.
- 21.2. Should cancellation take place after procurement of any materials, payment for such materials and any expenses incurred will be required to be paid.

22. Termination

- 22.1. We shall be entitled to terminate our employment under the contract in circumstances where:
- 22.1.1. you are in material or continuing breach of any obligations under the contract and fail to remedy such breach within 7 days of the receipt of our written notification of such breach;
- 22.1.2. there is persistent and wilful neglect by you;
- 22.1.3. you become incapable of performing your obligations under this contract;
- 22.1.4. you make any voluntary arrangement with your creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction);
- 22.1.5. an encumbrancer takes possession or a receiver is appointed of any of your property or assets;
- 22.1.6. you cease or threaten to cease to carry on business; or
- 22.1.7. we reasonably apprehend that any of the events mentioned above is about to occur in relation to you and we notify you accordingly.
- 22.2. Your payment obligations under this contract shall survive termination of this contract where the termination is brought about by your actions.
- 22.3. The termination of this contract, howsoever arising, shall not affect the rights and liabilities of the parties already accrued at such time or affect the continuance in force of such provisions as are expressed as capable of having effect after such termination.

23. **Prevention or Frustration:** If the contract becomes impossible to perform or is otherwise frustrated, you shall be liable to pay to us all costs, expenses, overheads and loss of profit which we, our suppliers or sub-contractors incur as a result of the frustration or impossibility of performance. Any pre-payments which may have been made to us under this contract shall be applied towards satisfaction of such sum as may become due.

24. Licence and Copyright

- 24.1. We shall, when requested, provide necessary documents, except those of a commercially sensitive nature, as we are required to provide under this contract. Any such documentation will be submitted in our normal standard format only. If additional copies or contract specific requirements are needed, we reserve the right to apply additional charges. No documentation shall be handed

- over until all payments under the contract have been received by us.
- 24.2. Copyright in all such documents shall remain vested in us, but insofar as we are empowered to do so, we shall grant a royalty-free non-exclusive licence to you to use and reproduce the said documents for your own use solely in connection with the works. It shall be a condition precedent to the granting of such a licence that all sums properly due to us under this contract have been paid in full.
- 24.3. We shall have no liability for improper use of the documents other than that for which they are prepared and you shall indemnify us from and against any loss arising from the improper use of the subject matter of this clause.
- 24.4. You warrant that any design or instruction furnished or given by you shall not be such as will cause us to infringe any letter patent, registered design or trade mark in the execution of the works.
- 25. Assignment**
- 25.1. You may not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of their rights or obligations under these terms and conditions.
- 25.2. We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under these terms and conditions, without your prior consent.
- 26. No Employment:** Nothing in this contract shall render or be deemed to render us an employee or agent of yours or you an employee or agent of ours.
- 27. Waiver:** The parties agree that no failure by either party to enforce the performance of any provision in this contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision of this contract. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.
- 28. Confidentiality:** Each party undertakes that throughout the duration of the contract, the parties may disclose certain confidential information to each other. Both parties agree that they will not use the confidential information provided by the other, other than to perform their obligations under this contract. Each party will maintain the confidential information's confidentiality and will not disseminate it to any third party, unless so authorised by the other party in writing.
- 29. Data Protection:** Each party agrees to comply with all applicable data protection legislation including, but not limited to, the Data Protection Act 2018 being the UK's implementation of the General Data Protection Regulation (GDPR) and any subsequent amendments thereto.
- 30. Third Party Rights:** This contract does not confer or purport to confer any benefit on any third party. In particular, rights that would otherwise arise in favour of third parties under the contracts (Rights of Third Parties) Act 1999 are hereby excluded.
- 31. Severance:** The parties agree that, in the event that one or more of the provisions of this contract is found to be unlawful, invalid or otherwise unenforceable, that/those provisions shall be deemed severed from the remainder of this contract. The remainder of this contract shall be valid and enforceable.
- 32. Governing Law and Jurisdiction:** These Terms and Conditions and the contract shall be governed by, and construed in accordance with, the laws of England and Wales and any dispute shall fall within the exclusive jurisdiction of the courts of England and Wales.